

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

NO. 4:09-M-1021

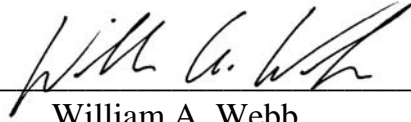
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|---------------------------|---|---------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| |) | |
| vs. |) | <u>ORDER</u> |
| |) | |
| |) | |
| BENNY CARL SMITH, JR., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

THIS CAUSE was heard on February 20, 2009 on Defendant's Preliminary Examination. The Government was represented by an Assistant United States Attorney and Defendant was present and represented by counsel. Defendant is charged in a criminal complaint with: 1) knowingly and intentionally conspiring to distribute more than five hundred grams of Cocaine, a Schedule II narcotic controlled substance; and 2) knowingly and intentionally possessing with intent to distribute more than five hundred grams of Cocaine, a Schedule II narcotic controlled substance.

During the hearing in this matter the Government failed to present evidence connecting Defendant to any quantity of cocaine. Specifically, the Government relied almost entirely upon vague assertions that Defendant had "affirmed" the statements of a co-defendant with regard to the quantity of cocaine at issue in this case. Accordingly, there is no probable cause at this time to believe that Defendant committed the crimes listed in the criminal complaint. Therefore, it is **HEREBY ORDERED** that those charges be

DISMISSED for lack of probable cause.

DONE AND ORDERED in Chambers at Raleigh, North Carolina this 20th day of February, 2009.

A handwritten signature in black ink, appearing to read "William A. Webb", is written over a horizontal line.

William A. Webb
U.S. Magistrate Judge